

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY TEHRAN

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E.O. 11652:N/A

TAGS: EFIN, IR

SUBJECT: IRAN'S SURPLUS PROPERTY DEBT

REF: TEHRAN 00530; SOBER-BREWING TELECON APRIL 4

1. DEPARTMENT HAS NOW HAD OPPORTUNITY TO REVIEW TEXT OF
1948 UK-IRAN FINANCIAL SETTLEMENT PER TEHRAN REQUEST
(REFTEL). OUR INFORMAL READING OF THAT DOCUMENT
SUGGESTS THAT THERE IS LITTLE IN IT FROM WHICH WE COULD
DRAW TO AID OUR CASE AGAINST GOI COUNTERCLAIM FOR RAILROAD
DAMAGES. (COMMENT: AGREEMENT DOES CONTAIN PROVISION
IN WHICH U.K. UNDERTAKES TO ADVANCE MONEY TO GOI TO BE
USED TO COMPENSATE US FOR SOME RAILROAD STORES WHICH WE
HAD PROVIDED TO IRANIAN STATE RAILWAY WHEN TRIPARTITE AGREE-
MENT WAS IN FORCE. IT MIGHT BE INFERRED THAT THE UK WAS
ACTING IN ITS ROLE AS THE "PRINCIPAL" AND THAT THIS IS
FURTHER INDICATION THAT THE U.K. HAD ASSUMED PRIMARY
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FINANCIAL RESPONSIBILITY FOR ITS "AGENT", THE U.S. THIS
ARGUMENT, HOWEVER, IS TENUOUS BUT CONSTITUTES THE ONLY
ASPECT OF UK-GOI AGREEMENT THAT PROVIDES ANY POSSIBLE
SUPPORT TO OUR POSITION ON THE COUNTERCLAIM. END
COMMENT).

2. DEPARTMENT HAS REVIEWED AND REAFFIRMED THE STRENGTH

AND VALIDITY OF OUR LEGAL POSITION ON THE COUNTERCLAIM, AS DISCUSSED IN OUR 1976 LEGAL MEMO. MOREOVER, L/NEA HAS NOTED POSSIBILITY OF AN ADDITIONAL LEGAL ARGUMENT THAT, EVEN IF IT IS ASSUMED THAT THE GOI'S COUNTERCLAIM IS VALID, GOI'S UNEXPLAINED FAILURE OR NEGLECT TO PRESS ITS CLAIM FOR NEARLY THIRTY YEARS GIVES RISE TO A DEFENSE AGAINST THE COUNTERCLAIM IN NATURE OF QUOTE LACHES UNQUOTE, A WELL-KNOWN LEGAL DOCTRINE ON THE BASIS OF WHICH DENIAL OF RECOVERY ON THE COUNTERCLAIM WOULD BE JUSTIFIED. SUCH SUBSTANTIAL DELAY WOULD IN ANY CASE APPEAR TO SERIOUSLY WEAKEN IRANIAN POSITION. THIS ARGUMENT IS BEING EXAMINED FURTHER BY DEPARTMENT.

3. ANOTHER POINT OF LEGAL SIGNIFICANCE CONCERNING COUNTERCLAIM IS THAT, IN RAISING THEIR CLAIM AGAINST US, IRANIANS NEVER EXPRESSLY INVOKED TERMS OF 1942 DRAFT AGREEMENT WITH "ALLIES" NOR DID GOI, OR THE U.S., FOR ITS PART, EXPLICITLY INDICATE THAT UK-GOI INFORMAL IMPLEMENTATION OF DRAFT AGREEMENT WOULD BE BINDING UPON U.S. IN ANY EVENT, LEGAL STATUS OF DRAFT AGREEMENT REMAINS UNCERTAIN SINCE DOCUMENT WAS NEVER SIGNED.

4. ACTION REQUESTED: FOREGOING SHOULD PROVIDE EMBASSY WITH AMPLE BASIS FOR RESUMING DISCUSSIONS WITH NEW GOI FINANCE MINISTER YEGANEH. IN ESSENCE, OUR POSITION ON BOTH LEND LEASE DEBT AND GOI COUNTERCLAIM REMAINS UNLIMITED OFFICIAL USE

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CHANGED. IF IRANIANS ASSERT THAT SETTLEMENT ON LEND LEASE DEBT MUST BE LINKED TO PAYMENT OF THEIR COUNTERCLAIMS, EMBASSY SHOULD NOTE THAT USG CLAIM HAS LONG BEEN OUTSTANDING (AND ACKNOWLEDGED BY GOI) AND SHOULD BE SETTLED WITHOUT REFERENCE TO AN UNCONNECTED CLAIM WHICH HAS BEEN DORMANT FOR NEARLY THIRTY YEARS AND THE VALIDITY OF WHICH HAS NOT BEEN ESTABLISHED. WE REMAIN WILLING, HOWEVER, TO CAREFULLY EXAMINE ANY ADDITIONAL EVIDENCE GOI CARES TO SUBMIT ON ITS CLAIM.

CHRISTOPHER

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